

SEC. 2. This act, being deemed of immediate importance, shall take effect from and after its publication in the Buchanan County Bulletin and Guardian and the Iowa State Register, without expense to the State.

Approved April 3, 1868.

I hereby certify that the foregoing act was published in the *Buchanan County Bulletin and Guardian* April 10, 1868, and in the *Iowa State Register* April 15, 1868.

ED WRIGHT, *Secretary of State*.

## CHAPTER 86.

### CIRCUIT AND GENERAL TERM COURTS.

AN ACT Establishing Circuit and General Term Courts, and to Define the Powers and Jurisdiction thereof. APRIL 3.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That Circuit Courts are hereby established throughout the State, and each judicial district, as now or hereafter constituted by law for the election of district judges, shall be divided into two circuits as hereinafter more particularly described, in each of which there shall be elected, by the qualified voters thereof, at the general election in November, 1868, and every fourth year thereafter, a Circuit Judge, the votes for whom shall be on the same ballot with that for State officers, shall be canvassed, returned, and certified in the same manner, and certificates of election issued the same, as in case of district judges.

SEC. 2. Said judges shall hold office for the term of four years, and until their successors are elected and qualified; but in case of a vacancy occurring in any circuit, the Governor shall appoint a judge who shall hold office until the next general election, and until his successor is elected and qualified.

SEC. 3. Each of the said judges shall hold at least four terms of court in each county of his circuit in each year, which court shall have original and exclusive jurisdiction in each county, severally, of the following actions and proceedings, viz.: All matters relating to the probate of wills, the appointment and supervision of executors, administrators, and guardians of minors, idiots, and lunatics, the settlement of decedents' estates,

and the care of the estates of minors and insane persons, and all others under guardianship; and all proceedings for the examination or settlement of the accounts of executors, administrators, and guardians; all applications for the sale of real estate belonging to minors or persons under guardianship; the issuing of marriage licenses; and of all actions and proceedings under article 1, chapter 57 of the Revision of 1860, and of all other actions and proceedings of which the county judge or county court now has jurisdiction.

**Concurrent jurisdiction.** SEC. 4. Said court shall have jurisdiction concurrent with the district court in all civil actions at law, and of foreclosures of mortgages, trust-deeds, and contracts for the sale of real estate, and to try and determine equitable issues arising in actions at law pending in this court, and also in all actions of partition, or for the assignment of dower, all applications for the writ of *ad quod damnum*, and of all appeals in special proceedings for the assessment of damages on the establishment or location of highways, railroads, and other public improvements, or the taking of private property for public use.

**Appeals from inferior cts.** SEC. 5. Said court shall have exclusive jurisdiction of all appeals and writs of error from justices' courts, mayors' courts, and all other inferior tribunals, either in civil or criminal cases; and all provisions of law now in force respecting such appeals and writs of error shall apply to this court with the same effect as if the name thereof were substituted wherever the word district court now occurs in the statutes relating thereto.

**No grand jury.** SEC. 6. No grand jury shall be impaneled in this court; but when an indictment for misdemeanor has been found in the district court, and the defendant is in custody or on bail, the district court, with the consent of the defendant, may order the trial to be had at the next term of the circuit court in the same county. **District court may order criminal trials at circuit court.** For the purpose of such trials, or the continuation thereof, the circuit court shall have the same powers as the court in which such indictment was found; and it shall be the duty of the district attorney to attend to the trial of all such cases therein.

**Transfers between district & circuit cts.** SEC. 7. Any case pending either in the district court or the circuit court of any county may, by the consent of parties, be transferred to the other of said courts within the same county, with the same effect as if a change of venue had been granted from one county to another, and the original papers shall be transferred without costs, and without retaining copy thereof.

Whenever a change of venue shall be granted on Change of account of prejudice or disability of the judge, the venue. cause shall be transferred to the district court of the same county unless the same objections exist to the judge of the district court.

SEC. 8. Each circuit judge shall have the same power in regard to injunctions, writs, orders, and other Powers of proceedings out of court as are now or hereafter may be possessed by district judges; and also may administer oaths, take acknowledgments, and depositions (except depositions to be used in his own court), and solemnize marriages.

SEC. 9. The circuit court of each county shall be a Court of record of record, and all statutes now in force respecting the venue and commencement of actions, the jurisdiction, process, and practice of the district court, the pleading and mode of trial in actions of law or in equity, the relation and attendance of petit jurors, the effect and lien of judgments, and the enforcement thereof by execution or otherwise, and the allowance and taxing of costs, shall be deemed applicable to said circuit court, except where the same may be inconsistent with the provisions of this act. The records and papers properly filed in a cause, in either the district or circuit court of a county, are equally evidence in the other court. Depositions taken for one court may be used in the other, with the same effect, subject to like objection, as if taken for such court.

SEC. 10. The sheriff and clerk of the district court in each county shall be the officers of the circuit court for said county, and for their services shall be entitled to the same fees as now are, or hereafter may be, allowed by law for like services in the district court. The clerk shall provide and keep for the circuit court the same books which are now required by law to be kept for the district court. The district and circuit judges of any county may, by a joint order under their hands, direct that the records and minutes of both courts be kept in one set of books. But all matters touching decedents' estates, wills, administrators, guardians, and heirs, and all business relating thereto, transacted in the circuit court, and also the record of marriage licenses, shall be kept separate in proper books, prepared for that purpose, as heretofore.

SEC. 11. The circuit court of each county shall have and use its own seal, having on the face thereof the words "Circuit Court," and the name of the county and State.

**Clerk to keep ct. open for certain business.** **Sec. 12.** For the transaction of probate and all other business heretofore within the jurisdiction of the county court, and not requiring notice, and for the issuing of citations and other notices to appear upon such business, the clerk, in the absence of the circuit judge, shall, at all times, keep the said court open, by himself or deputy, and shall have all the powers heretofore exercised by the county judge out of session, subject, however, to the supervision and approval of the judge.

**Powers of clerk.**

**Judge's salary, \$1,500.**

**Sec. 13.** The salary of each circuit judge shall be fifteen hundred dollars per annum, payable out of the State treasury in the same manner as the district judges are paid.

**Judge not to practice, &c.** **Sec. 14.** No circuit judge shall practice as an attorney or counselor at law, or give advice in relation to any case pending, or about to be brought, in any of the courts of this State.

**Probate fees, &c., to go into co. treasury.**

**Sec. 15.** All fees for probate business and other services heretofore performed by the county judge, shall continue to be collected as now fixed by law, and shall be paid into the county treasury.

**Two to four gen'l terms in each judicial district.**

**When to be held.**

**Sec. 16.** In each judicial district now or hereafter established by law for the district court, there shall be held not less than two nor more than four general terms in each year, consisting of the district judge and the two circuit judges within that district, at which term the said district judge shall preside. Said terms shall be held at such times and places as the judges may prescribe, by a joint order under their hands, made in the month of January of each year for the year then ensuing and to be filed with the clerk of the court in each county of the district. The general term shall have power to make and establish, and at pleasure alter and repeal, rules of practice in the several courts in such district.

**Rules of practice.**

**Appeals go to general term first.**

**Rev., §§ 2631, 2632.**

**Sec. 17.** All appeals from judgments or orders of the district court, or circuit court, or any judge thereof, within the said judicial district, shall be heard in the first instance by said general term, and the provisions of sections 2631, 2632, of the Revision of 1860, shall apply thereto, substituting the words, General term of the same judicial district, for the words, Supreme Court.

**How taken.**

**Sec. 18.** Such appeals shall be taken in the same manner, under the same rules, and with the same effect, as appeals are now taken from the district to the Supreme Court, except that no appeal to the general

**Term** shall be allowed after the expiration of three **No appeal**  
**months** from the rendition or entry of the judgment **after three**  
**or order** appealed from. **months.**

**SEC. 19.** The clerk of the district court in the **Clerk of D.C.**  
**county** in which a general term shall be held, shall be **clerk of gen'l**  
 the clerk of such general term; and all records or **term; duties**  
**transcripts** in cases appealed to said term shall be **similar to**  
**forwarded** and certified to him in the same manner **those of clerk**  
**that** they are forwarded and certified to by the Clerk of **of Sup. Ct.**  
 the Supreme Court in appeals taken to that court. He  
 shall perform the same duties for the general term that  
 the Clerk of the Supreme Court performs for the  
 Supreme Court. He shall deliver over all records to  
 any other clerk on the order of said general term. He  
 shall also certify all judgments or orders of the general  
 term, made on appeal, back to the proper counties, in  
 the same manner and with the same effect as is now  
 done by the Clerk of the Supreme Court. In all such  
 cases he shall charge and collect the same fees now  
 allowed to the Clerk of the Supreme Court in similar  
 cases.

**SEC. 20.** The general term may reverse or affirm **Proceedings**  
 the judgment or order below, or the part of either **of gen'l term**  
 appealed from, or may direct such judgment or order **on appeal.**  
 as the court or judge below should have done. It may  
 also, when it affirms a judgment, direct judgment  
 against the appellant and his sureties on the appeal  
 bond; and in all cases may make such order as to costs  
 as may be just; but in all cases where a new or modi-  
 fied judgment or order is directed by the general term,  
 its decision, with the transcript or other record upon  
 which it was made, shall be at once certified back to  
 the clerk of the court of the county from which the  
 appeal was taken, and such judgment shall be entered  
 by him, either during term or in vacation, as a substi-  
 tute for the original judgment or order, and process  
 issued for the enforcement of the same, whenever  
 requested by the party entitled thereto, unless stayed  
 upon appeal.

**SEC. 21.** In all cases commenced before a justice of **Decisions in**  
 the peace, the decision of the general term shall be **appeals from**  
 final, unless two or more of the judges holding said **justices' court**  
 term, shall certify that in their opinion a question **final, unless**  
 is involved in the case upon which it is desirable to **decision of**  
 have the decision of the Supreme Court. In all other **Supreme Ct.**  
 cases an appeal may be taken from judgments or orders **is desired.**  
 of the general term to the Supreme Court in the same  
 manner, under the same rules, and with the same effect

Appeals to Supreme Ct may be taken in 6 months.

Clerk of D.C. to send transcript to clerk Supreme Ct.

Judgments of Supreme Ct certified whereto.

Judges may reserve decisions for gen'l term.

Determinat'n of cause at general term, effect of. Evidence certified.

1st circuit, 1st district.

2d circuit, 1st district.

1st circuit, 2d district.

2d circuit, 2d district.

1st circuit, 3d district.

2d circuit, 3d district.

1st circuit, 4th district.

as appeals have heretofore been taken from the District Court, except that the time allowed for taking the same shall be six months. The notice of such appeal shall be served on, and the *superedeas* bond, if any, filed with, the clerk of the court in the county in which the cause was tried, who shall transmit to the Clerk of the Supreme Court the transcript or other record upon which the cause was heard at general term, with the decision of said term. The judgments and orders of the Supreme Court shall be certified back directly to the court in which the cause was tried for such further proceedings as may be necessary; but cases originally commenced before a justice of the peace shall be certified back to the circuit court.

Sec. 22. The judges of the circuit or district courts may, in any cause they may deem of sufficient importance, reserve their decisions on questions of law for hearing and determination at the general term, and in cases where it is necessary for that purpose, may order the finding of a special verdict by the jury on questions of fact in causes tried by jury, and [in] causes tried before the court, the court may make a finding of facts; and the hearing and determination of said cause shall be, in all respects, the same, and have the same effect, as a trial of said cause on appeal. And either party may have the evidence in the cause certified to said general term, to be there reviewed, in the hearing at the general term, the same as in the hearing of appeals in such cases.

Sec. 23. The counties of Lee and Des Moines in the first judicial district shall compose the first circuit therein.

The counties of Henry and Louisa, in said judicial district, shall compose the second circuit therein.

The counties of Van Buren, Wapello, and Davis in the second judicial district shall constitute the first circuit therein.

The counties of Appanoose, Monroe, Lucas, and Wayne shall constitute the second circuit in said judicial district.

The counties of Page, Montgomery, Fremont, Mills, and Pottawattamie, in the third judicial district, shall constitute the first circuit therein.

The counties of Clark[e], Decatur, Union, Ringgold, Adams, and Taylor shall constitute the second circuit in said judicial district.

The counties of Harrison, Shelby, Crawford, Monona, Woodbury, Ida, Cherokee, Plymouth, Sioux, O'Brien,

Osceola, and Lyon shall constitute the first circuit in the fourth judicial district.

The counties of Sac, Calhoun, Humboldt, Pocahontas, Buena Vista, Clay, Palo Alto, Kossuth, Emmett, and Dickinson shall constitute the second circuit in said district.

The counties of Warren, Polk, and Dallas shall constitute the first circuit in the fifth judicial district.

The counties of Madison, Adair, Cass, Audubon, Carroll, Green[e], and Guthrie shall constitute the second circuit in said district.

The counties of Washington, Jefferson, Keokuk, and Poweshiek shall constitute the first circuit in the sixth judicial district.

The counties of Mahaska, Marion, and Jasper shall constitute the second circuit in said district.

The counties of Scott and Muscatine shall constitute the first circuit in the seventh judicial district.

The counties of Clinton and Jackson shall constitute the second circuit in said district.

The counties of Benton, Tama, Iowa, and Johnson shall constitute the first circuit in the eighth judicial district.

The counties of Cedar, Linn, and Jones shall constitute the second circuit in said district.

The counties of Dubuque and Delaware shall constitute the first circuit in the ninth judicial district.

The counties of Buchanan, Black Hawk, and Grundy shall constitute the second circuit therein.

The counties of Allamakee, Winneshiek, and Howard shall constitute the first circuit in the tenth judicial district.

The counties of Clayton, Fayette, and Chickasaw shall constitute the second circuit therein.

The counties of Marshall, Story, and Boone shall constitute the first circuit in the eleventh judicial district.

The counties of Hardin, Franklin, Hamilton, Wright, and Webster shall constitute the second circuit in said district.

The counties of Bremer, Floyd, and Butler shall constitute the first circuit in the twelfth judicial district.

The counties of Mitchell, Worth, Winnebago, Hancock, and Cerro Gordo shall constitute the second circuit therein.

SEC. 24. The district judge of each judicial district shall, on or before the first day of December, 1868, designate, by an order under his hand, the times for holding

2d circuit, 4th district.

1st circuit, 5th district.

2d circuit, 5th district.

1st circuit, 6th district.

2d circuit, 6th district.

1st circuit, 7th district.

2d circuit, 7th district.

1st circuit, 8th district.

2d circuit, 8th district.

1st circuit, 9th district.

2d circuit, 9th district.

1st circuit, 10th district.

2d circuit, 10th district.

1st circuit, 11th district.

2d circuit, 11th district.

1st circuit, 12th district.

2d circuit, 12th district.

Dist. judge to arrange terms for 1869.

- the terms of the circuit court in each circuit in his district for the year 1869, which order shall be filed with the clerk of the court in each county of the circuit. And thereafter each general term shall at the last term held for the year 1869, and every alternate year thereafter, designate by an order under their hands the times for holding the terms of each circuit court in their district for the two years next ensuing, which order shall be filed with the several clerks of each circuit.
- Thereafter general term to fix times of court. SEC. 25. The circuit judges may interchange and hold each other's courts.
- Judges interchange. SEC. 26. This act shall take effect on the first Monday of January, A. D. 1869, except so much thereof as provides for the election of circuit judges, and fixing the times for holding the circuit courts, which shall take effect as provided by section 25, of the Revision of 1860.
- Take effect Jan. 1, 1869. Exception.
- Rev. § 25. Approved April 3, 1868.

## CHAPTER 87.

### REARRANGING CIRCUITS IN FIRST JUDICIAL DISTRICT.

- APRIL 4. AN ACT to Amend the Act passed by the Twelfth General Assembly of the State of Iowa, entitled "An Act establishing Circuit and General Term Courts, and to define the Powers and Jurisdiction thereof."
- Ch. 86, 1868, amended. SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That the act of the Twelfth General Assembly, entitled "An act establishing Circuit and General Term courts, and to define the powers and jurisdiction thereof," be and the same is hereby amended so as to read as follows: The counties of
- 1st circuit, 1st district. Lee and Henry, in the first judicial district, shall compose the first circuit therein; the counties of Des
- 2d circuit, 1st district. Moines and Louisa, in said judicial district, shall compose the second circuit therein.
- Taking effect. Exception. SEC. 2. This act shall take effect on the first Monday of January, A. D. 1869, except so much thereof as provides for the election of circuit judges, and fixing the times for holding the circuit courts, which shall take effect as provided by section 25 of the Revision of 1860.
- Rev. § 25. Approved April 4, 1868.